

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

JERMAINE BIRDOW,)	
)	
Petitioner,)	
vs.)	NO. CIV-12-857-D
)	
DEPARTMENT OF CORRECTIONS,)	
)	
Respondent.)	

ORDER

Petitioner, a state prisoner who appears *pro se*, brought this action seeking habeas corpus relief pursuant to 28 U. S. C. § 2254. In accordance with 28 U.S.C. §636(b)(1)(B) and (C), the matter was referred to United States Magistrate Judge Bana Roberts for initial proceedings. Respondent filed a motion to dismiss, and Petitioner failed to respond to that motion.

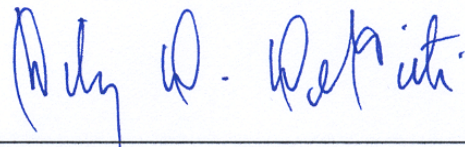
On February 12, 2013, the Magistrate Judge filed a Report and Recommendation [Doc. No. 14] recommending dismissal of the action, concluding that Petitioner failed to state a cognizable claim for habeas relief.

In the Report and Recommendation, the Magistrate Judge advised the parties of their right to file objections, and she scheduled a March 4, 2013 deadline for the filing of such objections. The Magistrate Judge further expressly cautioned Petitioner that a failure to timely file objections would result in a waiver of the right to appellate review of the matters determined in the Report and Recommendation.

Petitioner did not file an objection to the Report and Recommendation, nor did he seek an extension of time in which to do so. Therefore, the Report and Recommendation [Doc. No.14] is adopted as though fully set forth herein. For the reasons set forth in the Report and Recommendation, this action is dismissed.

The Court also concludes that a Certificate of Appealability should not issue because Petitioner waived his appellate rights by failing to object to the Report and Recommendation. In any event, a Certificate of Appealability will issue “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U. S. C. § 2253(c)(2). To make such a showing, Petitioner must demonstrate that “reasonable jurists could debate whether...the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (internal quotation marks omitted). Petitioner has not met that burden in this case.

IT IS SO ORDERED this 11th day of March, 2013.



TIMOTHY D. DEGIUSTI
UNITED STATES DISTRICT JUDGE